

**PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. LISA MADIGAN, Attorney General  
of the State of Illinois,**

**v.**

**Defendant.**

**No. 06 CV 2385**

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court's entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 511 *et seq.* (2006), and the Illinois Pollution Control Board ("Board") Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Consent Order that it be a final judgment on the merits of this matter.

**A. Parties to the Consent Order**

1. On March 9, 2006, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois upon her own motion and upon the request of the Illinois EPA, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2006), against Amtrak.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006).

3. At all times relevant to the Complaint, Amtrak was, and is, a District of Columbia corporation that is authorized to transact business in the State of Illinois and Amtrak owns and operates a train servicing facility at 1575 South Lumber Street, Chicago, Cook County, Illinois, ("Lumber Street Yard" or "Yard" or "Site").

**B. Allegations of Non-Compliance**

Plaintiff contends that Amtrak has violated the following provisions of the Act and Board Regulations:

COUNT I Failing to prevent the discharge of free phase petroleum and petroleum contaminated ground water into the Chicago River, Defendant caused or allowed water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

COUNT II Improperly storing and discharging petroleum products at the Lumber Street Yard so that petroleum products were released into the ground water and subsequently into the Chicago River, Defendant deposited contaminants upon the land in such a place and manner as to create a water pollution hazard. in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);

COUNT III Causing, threatening, or allowing the discharge of a contaminant into waters of the State without an NPDES permit in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

**C. Non-Admission of Violations**

Amtrak represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, Amtrak does not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

On November 27, 2006, an Agreed Interim Order was entered which obligated Amtrak to conduct interim remedial measures and remedial investigation and feasibility study activities to fully address releases and continuing threats of releases of contaminants to the Chicago River, at Amtrak's train servicing facility at the Lumber Street Yard. The Agreed Interim Order is attached hereto as Exhibit A. At the time of entry of this Order, and in accordance with the terms of the Agreed Interim Order, Amtrak has implemented and completed the Illinois EPA-approved remedial investigation/feasibility work plan ("RI/FS") and has submitted a remedial objectives report ("ROR"), which the Illinois EPA conditionally approved on November 19, 2008, an "Addendum 1 Remedial Objectives Report", and a revised ROR dated July 18, 2009, to the Illinois EPA for its approval.

**II. APPLICABILITY**

This Consent Order shall apply to and be binding upon the Parties to the Consent Order, and any officer, director, agent, or employee of Amtrak, as well as any successors or assigns of Amtrak. Amtrak waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This

Consent Order may be used against Amtrak in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

Amtrak shall notify each contractor to be retained to perform work required in this Consent Order of each of the requirements of this Consent Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Order to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Consent Order. In addition, Amtrak shall provide copies of all schedules for implementation of the provisions of this Consent Order to the prime vendor(s) supplying the control technology systems and other equipment required by this Consent Order.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of Amtrak under this Consent Order. In the event that Amtrak proposes to sell or transfer any real property or operations, which are within the Site and subject to this Consent Order, Amtrak shall notify the Plaintiff thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. Amtrak shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Amtrak site access and all cooperation necessary for Amtrak to perform to completion any compliance obligation(s) required by this Consent Order. Amtrak shall provide a copy of this Consent Order to any such successor in interest and Amtrak shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, Amtrak and a proposed purchaser or operator of the facility may jointly

request, and the Plaintiff, in its discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future requirements of this Consent Order in place of, or in addition to, Amtrak. This provision does not relieve Amtrak from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

### **III. JUDGMENT ORDER**

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

#### **A. Penalty**

Amtrak shall pay a civil penalty of One Hundred Thirteen Thousand Dollars (\$113,000.00). Payment shall be tendered within thirty (30) days of the date of the entry of the Consent Order.

#### **B. Stipulated Penalties, Interest and Default**

1. If Amtrak fails to pay the penalty in the time specified above, fails to complete any activity, or fails to comply with any response or reporting requirement set forth in this Consent Order, Amtrak shall provide notice to the Plaintiff of each failure to comply with the requirements of this Consent Order and shall pay stipulated penalties in the following amounts until such time as compliance is achieved:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1-30 days
\$1,000	31 days and beyond

2. The Plaintiff may make a demand for stipulated penalties upon Amtrak for its noncompliance with this Consent Order. However, failure by the Plaintiff to make this demand shall not relieve Amtrak of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date Amtrak knows or should have known of its noncompliance with any requirement or provision of this Consent Order.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Defendant not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

#### **C. Payment Procedures**

All payments required by this Consent Order shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments for any stipulated penalties owed shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and Amtrak's federal tax identification number shall appear on

the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington St, 18<sup>th</sup> Flr.  
Chicago, Illinois 60602

**D. Future Compliance**

1. Amtrak shall continue to implement the current interim remedial measures presented in its Interim Remedial Measures Proposal, dated December 22, 2006, in accordance with the approval letter issued by Illinois EPA's Russ Irwin on March 16, 2007 until Amtrak begins to implement the Illinois EPA-approved Remedial Action Plan ("RAP") required hereunder.

2. All current interim remedial measures being implemented by Amtrak as of the entry of this Consent Order and all remedial measures to be implemented by Amtrak pursuant to the Illinois EPA approved revised RAP, as required hereunder, shall be conducted by, or under the supervision of a Licensed Professional Engineer, licensed and in good standing in Illinois.

3. All plans and reports submitted for review and approval shall be prepared by, or under the supervision of a Licensed Professional Engineer, licensed and in good standing in Illinois, who shall certify to the accuracy and completeness of any submitted plan or report.

4. All activities conducted and submittals made by Amtrak hereunder shall be subject to Illinois EPA review and approval pursuant to the Illinois Site Remediation Program and this Consent Order, including the Dispute Resolution provisions contained in this Consent Order.

5. Plaintiff acknowledges that Amtrak has submitted to Illinois EPA for its review

and approval a revised ROR dated July 18, 2009.

6. Amtrak shall submit a revised RAP for Illinois EPA's review and approval within sixty 60 days of receipt of written notice from Illinois EPA indicating the revised ROR has been approved. In the event Illinois EPA rejects the revised RAP Amtrak submits, Amtrak shall either implement the Dispute Resolution provisions of this Consent Order; or, within 30 days of Illinois EPA's rejection of the revised RAP, submit to the Illinois EPA a new revised RAP that addresses all deficiencies identified by the Illinois EPA in its disapproval.

7. Once a revised RAP and schedule have been approved or approved with conditions by Illinois EPA, the Illinois EPA approved revised RAP and schedule shall be incorporated herein by reference and become enforceable provisions of this Consent Order.

8. Once a revised RAP and schedule have been approved or approved with conditions by Illinois EPA, Amtrak shall commence implementation of the Illinois EPA approved revised RAP within 30 days of approval of the revised RAP, and shall thereafter comply with all deadlines contained therein, subject to III.F.2 (Modification).

9. Amtrak shall complete all remedial activities required by the revised RAP approved or approved with conditions by Illinois EPA by no later than 8 years from the date of Illinois EPA's written approval of the revised RAP, subject to III.F.2 (Modification.).

10. Within 90 days of when Amtrak believes it has completed all remediation activities required by the Illinois EPA approved revised RAP and this Consent Order, Amtrak shall submit a Remedial Action Completion Report ("RACR") consistent with 35 Ill. Adm. Code 740.455 for Illinois EPA review and approval.

11. If Illinois EPA does not approve the proposed RACR as submitted, Amtrak shall submit to Illinois EPA a revised RAP and proposed schedule or a revised RACR, as may be



directed by Illinois EPA in its notice that the draft RACR was not approved as submitted, within 60 days of receipt of written notice from Illinois EPA indicating the draft RACR was not approved as submitted. Any such proposed revised RAP and schedule or revised RACR shall address all deficiencies identified by Illinois EPA in its written notice indicating that the draft RACR was not approved as submitted.

12. Once a revised RAP and schedule have been approved or approved with conditions by Illinois EPA (if a revised RAP and schedule are directed to be submitted by Illinois EPA following disapproval of a proposed RACR), the Illinois EPA approved revised RAP and schedule shall be incorporated by reference and become enforceable provisions of this Consent Order.

13. Once a revised RAP and schedule have been approved or approved with conditions by Illinois EPA (if a revised RAP and schedule are directed to be submitted to Illinois EPA following disapproval of a proposed RACR), Amtrak shall commence implementation of the Illinois EPA approved revised RAP within 30 days of approval of the revised RAP, and shall thereafter comply with all deadlines contained therein, subject to III.F.2 (Modification).

14. Illinois EPA will review a proposed RACR consistent with 35 Ill. Adm. Code 740.525. Once Illinois EPA approves a RACR or revised RACR, Illinois EPA will issue a No Further Remediation Letter consistent with the provisions of 35 Ill. Adm. Code Part 740, Subpart F.

15. Until Illinois EPA approves a revised RAP as required hereunder, Amtrak shall provide Illinois EPA with monthly written progress reports of all work conducted hereunder. The Illinois EPA-approved revised RAP shall include the schedule and frequency of progress report submissions thereafter and the parties may subsequently modify that schedule by

agreement in writing. These reports shall be in addition to the semi-annual groundwater monitoring reports Amtrak has been providing. The progress reports shall include the amounts of product and contaminated groundwater recovered and where the recovered product and groundwater were disposed. When a required progress report and a semi-annual groundwater monitoring report coincide as to timing, they may be combined. The progress reports shall detail work performed during the previous reporting period, work anticipated in the next reporting period, and any delays which have occurred or are anticipated.

16. Until Illinois EPA approves a RACR or revised RACR as required hereunder, Amtrak shall continue to implement the inspection, monitoring and response program which Amtrak submitted to Illinois EPA on November 29, 2006 to address seeps or releases from the site to the Chicago River. The inspection, monitoring and response program which Amtrak submitted on November 26, 2006 does not relieve Amtrak of any obligations it has to report any seep or release from the site to the Chicago River under any applicable federal, state, or local law.

17. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Lumber Street Yard, subject to Amtrak's safety rules, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

18. This Consent Order in no way affects the responsibilities of Amtrak to comply with any other federal, state or local laws or regulations, including but not limited to the Act and

the Board Regulations.

19. Amtrak shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint to the extent that such violations relate to the Site, or Amtrak's operations at the Site.

**E. Force Majeure**

1. *Force majeure* is an event arising solely beyond the control of Amtrak, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of Amtrak. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse Amtrak for a failure to comply with such a requirement.

2. When a *force majeure* event occurs which causes, or may cause a delay, in the performance of any of the requirements of this Consent Order, Amtrak shall orally notify John P. Waligore, Assistant Counsel, Illinois EPA at 217: 306-4247, or a subsequently designated Illinois EPA representative at such phone number as may subsequently be designated, within forty-eight (48) hours of the occurrence. Written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if Amtrak fails to comply with these notice requirements.

3. Within ten (10) calendar days of receipt of any written *force majeure* notice, the Plaintiff shall respond in writing regarding Amtrak's claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Amtrak and that Amtrak could not have

prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation shall be filed as a modification to this Consent Order. Amtrak shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If the Plaintiff does not accept Amtrak's claim of a *force majeure* event, Amtrak must file a petition with the Court within twenty (20) calendar days of receipt of the Plaintiff's determination in order to contest the imposition of stipulated penalties. The Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon Amtrak. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of Amtrak and that Amtrak could not have prevented the delay by the exercise of due diligence, Amtrak shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

#### **F Enforcement and Modification of Consent Order**

1. This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. Amtrak agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

2. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A

request for any modification shall be made in writing and submitted to the designated representatives. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party identified in Section III. H or subsequently identified representatives, for filing and incorporation by reference into this Consent Order.

#### **G Dispute Resolution**

1. The Parties to this Consent Order agree that no disputes arising under this Consent Order shall be submitted to the Illinois Pollution Control Board. The Parties to this Consent Order agree that all disputes shall be subject to Section III. G , subject to the exceptions provided herein, and review of the United States District Court.

2. Except as provided herein, the Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order, including but not limited to the Illinois EPA's decision regarding appropriate or necessary response activity, approval or denial of any report, plan or remediation objective, or the Plaintiffs' rejection of a request for modification of the Consent Order. The Plaintiff reserves the right to seek enforcement by the Court where Amtrak has failed to satisfy any compliance deadline within this Consent Order. The following are also not subject to the dispute resolution procedures provided by this section: a claim of *force majeure*, a failure to make any required payment and any circumstances posing a substantial danger to the environment or to the public health or welfare of persons.

3. The dispute resolution procedure must be invoked by a party through a written notice describing the nature of the dispute and the party's position with regard to such dispute. The other party shall acknowledge receipt of the notice and schedule a meeting to discuss the

dispute informally not later than fourteen (14) calendar days from the receipt of such notice. These informal negotiations shall be concluded within thirty (30) calendar days from the date of the first meeting between the parties, unless the parties agree, in writing, to shorten or extend this period. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution. As part of the resolution of any dispute, the Parties to the Consent Order, by agreement or by order of this Court, may extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

4. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide Amtrak with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within twenty (20) calendar days of Amtrak's receipt of the written summary of the Plaintiff's position, Amtrak files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Amtrak's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, the Plaintiff's written summary of its position, Amtrak's petition before the Court and the Plaintiff's response to the petition. The Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

#### **H Notice and Submittals**

Except for payments, the submittal of any notice, reports or other documents required

under this Consent Order shall be delivered to the following designated representatives:

As to the Plaintiff

Russ Irwin  
Site Remediation Program, Bureau of Land  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

John P. Waligore  
Assistant Counsel, Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

George D. Theophilos  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 West Washington Street, 18th Floor  
Chicago, Illinois 60602

FOR AMTRAK:

Michael Stern, Esq.  
Senior Associate General Counsel  
Amtrak  
50 Union Avenue  
New Haven, Connecticut 06519

Craig M. Caldwell  
Superintendent, Environmental  
Amtrak  
30th and Market Street, Box 13  
Philadelphia, Pennsylvania 19104

Ellen Jurczak  
Senior Environmental Coordinator  
Central and Southern Divisions  
Amtrak  
525 W. Van Buren St.  
Chicago, IL 60607

James A. Vroman, Esq.  
Jenner & Block LLP  
330 N. Wabash  
Chicago, IL 60611-7603

**I Release from Liability**

In consideration of Amtrak's payment of a \$113,000 penalty, its commitment to Cease and Desist as contained in Section III.D. above, and completion of all activities required hereunder, the Plaintiff releases, waives and discharges Amtrak from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's Complaint filed on March 9, 2006. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against Amtrak with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. Amtrak's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 513.315 (2006), other than Amtrak.

**J Execution and Entry of Consent Order**

This Order shall become effective only when executed by all Parties to this Consent Order and the Court. This Order may be executed by the parties to this Consent Order in one or



more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party to this Consent Order certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

WHEREFORE, the parties to this Consent Order, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN,  
Attorney General of the  
State of Illinois

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau

BY:   
JOHN J. KIM  
Chief Legal Counsel

DATE: 7/23/09

DATE: 7/22/09

FOR THE NATIONAL RAILROAD  
PASSENGER CORPORATION (AMTRAK)

BY: Eleanor D. Acheson  
Eleanor D. Acheson  
*Vice-President, General Counsel and Corporate Secretary*

DATE: July 28, 2009

ENTERED:

Clifton D. Enders

JUDGE

DATE: Aug 4, 2009